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Ser. No. 09/600,320



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Docket No. 223-001

PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of:

JOHN P. GAHAN

Application No.: 09/600,320

Filed: July 16, 2000

For: ROTARY TWO STROKE ENGINE

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Group Art Unit: 3748

Examiner: Thai-Ba Trieu

**REMARKS**

The Applicant has carefully reviewed the Office Action dated October 22, 2003, and responds with the cancellation of claims 16-30 and the submission of new claims 31-49 for consideration.

With regard to the rejection of original claims 16 and 17 under 35 U.S.C. §102(b), the rejection is made moot by the cancellation of these claims. However, even if applied to corresponding new claims 31 and 32, the rejection is believed to be improper. In a Section 102 analysis, the standard for lack of novelty or “anticipation” is one of strict identity. As stated in *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 231 U.S.P.Q. 81, 90 (Fed. Cir. 1986), *cert. denied*, 480 U.S. 947, “[i]t is axiomatic that for prior art to anticipate under Section 102 it has to meet every element of the claimed invention . . . .” As amended, new claim 31 includes “at least one automatically rotatable induction timing ring operatively connected to the engine housing.” This limitation is believed to patentably distinguish over the ‘343 patent to Gahan since Gahan neither teaches nor suggests this limitation.

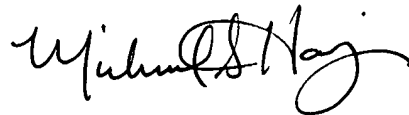
More specifically, the cited ‘343 Gahan patent, in the passages cited by the

Examiner (Figs. 12-13; page 14, lines 21-27; page 15, lines 1-26; page 19, lines 14-19; page 20, lines 1-23), clearly states that the rings do not rotate. The '343 patent, therefore, provides a more limited power response to changes in motor rotation speed, as fuel-air charge cannot be drawn into the combustion chamber earlier in the pistons stroke at higher rpms. The present application provides rotatable (induction and transfer) rings, to provide variable and increased power response to changes in rpm (shown at least in Figure 10; page 11, lines 6-9; and page 8, lines 6-9). Furthermore, it is clear that the '343 patent only mounts the rings by dowels, the dowels (51, 52) being fixed in position in the ring and cylinder side plates. For these reasons, allowance of claim 31 and its dependent claims (32-49) is now in order and such action is earnestly solicited.

In light of the above amendments, Applicant contends that application as amended is in condition for allowance and respectfully submits the case for reconsideration. In the event that some unforeseen point still remains to be considered in order to obtain allowance of all of the claims, it is respectfully requested that Applicant's attorney be telephoned at the number below so that the final allowance can be expedited.

Respectfully submitted,

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